

## STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. J-09/09-506  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Family Services Division denying the petitioner's request to expunge a report of sexual abuse from its child abuse registry. The issue is whether the Department abused its discretion in not removing the petitioner's name from the child abuse registry.

## DISCUSSION

There is no dispute that in August 2001 the Department substantiated a report that the petitioner had sexually abused her daughter. The Department's records indicate that in June 2000 the petitioner's daughter, then age 11, was removed from the petitioner's home pursuant to a CHINS proceeding stemming from reports of "maltreatment" by the petitioner. While the child was out of the home, she disclosed to her therapist that the petitioner had engaged in sexual acts with her when she was four or five years old. Following this disclosure, and after the Department's

subsequent "substantiation" of it, the petitioner, in October 2001 waived her right to contest her termination of parental rights concerning her daughter.

It does not appear that the petitioner took any further action in the matter until 2009, when she filed with the Department a request that her name be removed from the registry. It appears the petitioner's request was spurred by the fact that she is now living with a man who is seeking custody of his grandchildren.

The petitioner met with a Department reviewer in May 2009. At the time she denied that she had ever sexually abused her daughter, said her daughter was "broken when she came out of the package", and admitted that her relationship with her daughter had always been negative and strained. Her request for expungement consisted mainly of letters of support from friends and family, none of which addressed the underlying allegations.

She also stated that at the time of the alleged incidents she was having mental health and substance abuse problems that have since been successfully treated. The petitioner told the reviewer that she would submit additional evidence regarding her mental health treatment since that time. When the Department did not receive those materials,

it denied the petitioner's request for expungement on August 19, 2009.

The petitioner appealed this decision to the Board on September 21, 2009, and enclosed several items of written materials. Following telephone status conferences, the Department agreed to reconsider its decision in light of the new materials submitted by the petitioner. In an Amended Commissioner's Review decision dated January 4, 2010, the Department again denied the petitioner's expungement request.

As noted above, the petitioner continues to deny that she sexually abused her daughter. She has now submitted documentation from a community mental health agency that she received treatment for substance abuse from January 17, 2001 through October 1, 2003. She has also submitted verification that she saw a psychiatrist with that agency between March 2001 and April 2004. However, the report from that agency notes only that "you addressed some of the issues pertaining to the Doctors diagnosis" (sic) and "you appear to have worked on stabilization of Posttraumatic Stress Disorder and Major Depression".

The only other medical evidence submitted by the petitioner was a report from a counselor she began seeing in June 2009, *after* she filed her request for expungement. The

counselor indicates that she is also treating one of the children who presently live with the petitioner, and that that child denies any abuse or neglect of any kind from anyone in the household, including the petitioner. The report notes that the petitioner maintains that her daughter was mentally unstable when she made the allegations, and states that the petitioner "presents with significant trauma and anxiety related to this accusation and is working at getting this issue resolved".

Unfortunately for the petitioner, the Board's authority in reviewing Department decisions regarding expungement requests is limited. 33 V.S.A. § 4916c(e) provides that *"the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petitioner for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board."*

In its decision not to expunge the report from its registry the Department notes mainly that the petitioner has failed to produce specific evidence of rehabilitation. The reports submitted by the petitioner, cited above, strike the hearing officer as remarkably noncommittal and cryptic regarding the issue of rehabilitation. Based on the evidence

submitted by the petitioner, it cannot be concluded that the commissioner has abused his discretion in denying the petitioner's request to expunge the report in question from the Department's registry.

ORDER

For the above reasons the Department's decision refusing to expunge the report of child abuse from its registry is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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